Japan's Open Government Advocacy, the Efficacy of the Freedom of Information Act (FOIA) and Public Sector Whistleblowers, and the Public's Right to Know in Japan, the U.S. and Beyond

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I. INTRODUCTION

Throughout its long history of culture and tradition, Japanese society has placed great value on adherence to social norms, respect for

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authority, and collective efforts to build harmony and group cohesion through teamwork and consensus-building in the family, workplace, and community. While these strong values and societal efforts contributed to Japan's long history of sovereignty and political independence, they also became a source of societal concern and public condemnation, particularly when these social norms and cultural values were violated or exploited by government officials and corporate elites in pursuit of their own interests and objectives. Powerful elites in publicly entrusted positions often employed state violence and brazen injustice against political dissenters, social critics, and others who challenged their authority for its lack of transparency and accountability of policies and programs. Recently, Japan's political activists and civil society organizations have begun to question and challenge the role of the Liberal Democracy Party (LDP) in the formulation of both domestic and international policies and programs. Since its establishment in 1955, the LDP has been a dominant political force, contributing to the strong criticism and public condemnation of their policies formulated and implemented without much public input, critical political debate, or sufficient public consent and oversight. As a result, a multiplicity of Japan's concerned citizens, progressive lawyers, and political activists have begun to participate in the Open Government Movement to demand transparency and accountability in government.[1] Some of them have also advocated for greater civic engagement in governance, including the return of "12-member, all-citizen" jury trials or similar forms of active civic participation in justice systems such as those Japan once adopted prior to WWII.[2]

To shed critical light on the history of Japan's advocacy movement for citizen engagement, transparency, and accountability, the University of California College of Law, San Francisco (UCLSF) organized a Japanese law symposium with the theme, "Shining a Light into the Halls of Government: Achievements and Challenges of the Open Government Movement in Japan," which took place on September 22, 2023. UCLSF Professor Setsuo Miyazawa, a renowned socio-legal scholar in East Asia and the founder of the Asian Law and Society Association (ALSA), took the leadership role in organizing the 2023 East-Asian legal event. The event was co-sponsored by the Center for East Asian Legal Studies (CEALS), under the leadership of Director Keith J. Hand, another prominent socio-legal scholar specializing in East Asia, including China.

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[1] The primary objective of the open government movement is to foster greater trust in governmental institutions and to empower people to engage more actively in democratic processes.

[2] For Japan's attempt to introduce the lay participation system, *see* Hiroshi Fukurai, *The Rebirth of Japan's Petit Quasi-Jury and Grand Jury Systems: Cross-National Analysis of Legal Consciousness and Lay Participatory Experience in Japan and the U.S.*, 40 CORNELL INT'L L. J. 315, 350 (2007).

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The thematic focus was the critical examination of Japan's Open Government Movement to promote transparency and accountability through the use of open data and collaboration with civil society organizations. The conference presenters included Japan's prominent lawyer and open government advocate, Hiroshi Miyake, and American professor and lawyer, Lawrence Repeta. They critically evaluated the past achievements of the Open Government Movement while exploring future challenges and possible strategic visions for this effective grassroots movement in Japan.

The advocacy of an open government in many countries throughout the world has been considered one of the most important aspects of civil society movements, due to the widespread history of government misconduct, corruption, and ethically questionable actions and decisions. Many countries have also witnessed the government's refusal to disclose internal records and information on state secret policies and administrative rules, as well as the history of state violence directed against their own political dissenters both domestic and abroad. Japan and the U.S. are no exception. The U.S, for example, has had a long history of keeping "state secrecy" and "national security" information related to the execution of both domestic programs and covert foreign operations away from public access, to advance the interests of state-formulated policies and economic and political projects. Recent U.S. secret ventures and covert operations in Asia which were kept secret from the American public include: covert drug operations in the Golden Triangle to finance "illegal" overseas operations and programs such as the opium production and drug trade in Southeast Asia;[3] as well as the secret bombing of Cambodia and Laos during the Vietnam War during both Johnson and Nixon Administrations.[4] The U.S. government also engaged in secret domestic

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[3] *See generally* ALFRED W. MCCOY, THE POLITICS OF HEROIN IN SOUTHEAST ASIA (New York, Harper & Row 1972).

[4] Operation Menu was a covert U.S. Strategic Air Command (SAC) tactical bombing campaign conducted in Cambodia from the late 1960s to the early 1970s. Operation Barrel Roll was a covert U.S. Air Force 2nd Air Division and U.S. Navy Task Force 77 campaign conducted in the bombing of Laos from 1964 to 1973. *See*, *e.g.*, JOE PAMAR & ROBERT DUMONT, SOF KONTUM*:* TOP SECRET MISSIONS IN VIETNAM, LAOS AND CAMBODIA, 1968-1969 (Casemate 2022). *See also* Nicole Barrett, *Holding Individual Leaders Responsible for Violations of Customary International Law: The U.S. Bombardment of Cambodia and Laos*, 32 COLUM. HUM. RTS. L. REV. 429, 429 (2000). For recent examples of U.S. covert extradition and torture programs such as the infamous Abu Ghraib torture, and abuse of prisoners during the George W. Bush Administration, *see generally* TREVOR PAGLEN & A. C. THOMPSON, TORTURE TAXI: ON THE TRAIL OF THE CIA'S RENDITION FLIGHTS (Melville House 2006). For secret global assassination campaigns, including clandestine drone strikes of terrorists in Afghanistan, Yemen, and other "hotbeds of terrorism," during the Barack Obama Administration, *see* Jeremy Scahill, *The Assassination Complex*, INTERCEPT, (Oct. 15, 2015, 7:57 AM) https://theintercept.com/drone-papers/the-assassination-complex/ [https://perma.cc/536V-Y4Q4]; Cora Currier, *The Kill Chain: New Details About Secret Criteria for Drone*

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campaigns to prosecute and neutralize political dissenters and their organizations.[5] The Federal Bureau of Investigation's (FBI) infamous counterintelligence program (COINTELPRO), for instance, was created and effected from 1956 to 1971 under the leadership of FBI Director J. Edgar Hoover.[6] They engaged in secret surveillance, persecution, prosecution, as well as outright assassinations, of dissident leaders so as to neutralize their political activism.[7] These covert FBI operations were assisted by other agents of state intelligence like the National Security Agency (NSA), the Central Intelligence Agency (CIA), as well as state police, and local law enforcement agencies.[8]

Japan also had its own secret government policies and programs.[9]

Strikes and How the White House Approves Targets, INTERCEPT, (Oct. 15, 2015, 7:57 AM), https://theintercept.com/drone-papers/the-kill-chain/ [https://perma.cc/ESA7-8UMU]. Finally, for countless numbers of regime changes throughout the world in an attempt to topple "socialist" or "communist" governments through military coups and overthrows supported by nearly all post-WWII U.S. administrations, *see* Noam Chomsky, *The Revenge of History: Chomsky on Japan, China, the United States, and the Threat of Conflict in Asia*, 10 ASIA-PAC. J.: JAPAN FOCUS, 1, 1 (2012) ("If the laws of the Allied postwar trials of war criminals in Tokyo and Nuremberg were fairly applied, 'then every postwar American president would have been hanged."). For "illegal" U.S. operations overseas, including numerous instances of military coups sponsored by the U.S. government around the globe since the end of the Second World War, *see generally*, WILLIAM BLUM, ROGUE STATE: A GUIDE TO THE WORLD'S ONLY SUPERPOWER (3rd ed. 2002).

[5] *See generally* WARD CHURCHILL & JIM VANDER WALL, THE COINTELPRO PAPERS: DOCUMENTS FROM THE FBI'S SECRET WARS AGAINST DISSENT IN THE UNITED STATES (1st ed. 1990).

[6] WARD CHURCHILL & JIM VANDER WALL, AGENTS OF REPRESSION: THE FBI'S SECRET WARS AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT (1990).

[7] *Id.*

[8] AMI CHEN MILLS, CIA OFF CAMPUS: BUILDING THE MOVEMENT AGAINST AGENCY RECRUITMENT AND RESEARCH (1999). *See also* Frederick L. Wettering, *Counter Intelligence: Broken Triad*, 13 INT'L J. INTEL. & COUNTER INTEL., 265 (2000). For the collaboration between multiple U.S. intelligence agencies, including CIA, NSA, and DIA, among others, *see* JOHN PERKINS, CONFESSIONS OF AN ECONOMIC HIT MAN, (Plume 2005), and the more updated version by the same author, JOHN PERKINS, THE NEW CONFESSIONS OF AN ECONOMIC HIT MAN: HOW AMERICA REALLY TOOK OVER THE WORLD (2018).

[9] For Japan, *see* Brad Glosserman, *Don't Forget the Conservative Core that Churns in Japan,* JAPAN TIMES (May 10, 2023), https://www.japantimes.co.jp/opinion/2023/05/10/commentary/world-commentary/conservative-japan/ [https://perma.cc/QV8G-P9JL]; Lucy Craft, *Japan's State Secrets Law: Hailed by the U.S., Denounced by Japanese*, NPR-KQED (Dec. 31, 2013, 6:53 PM), https://www.npr.org/sections/parallels/2013/12/31/258655342/japans-state-secrets-law-hailed-by-u-s-denounced-by-japanese [https://perma.cc/YAB8-N6KN]; Ryan Gallagher, *Untold Story of Japan's Secret Spy Agency*, INTERCEPT (May 19, 2018,

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They were generated by members of the so-called "Iron Triangle," which included political leaders, business oligarchs, and national bureaucracies aiming to advance national, political, and economic interests without the Japanese public's knowledge.[10] Some of these operations led to public health disasters. For example, one such operation during the World War II (WWII) era that would come back haunt the Japanese public involved spreading lethal infections of HIV/AIDS and Hepatitis C viruses to nearly two million Japanese civilians in the late 1980s and early 1990s.[11] The genesis of these viral outbreaks were tied to the covert germ and bio-chemical warfare experiments conducted in China by Unit 731 of the Imperial Japanese Army in the 1930s and 1940s, using Chinese citizens and Korean, Russian, and American prisoners of war as experimental subjects.[12] The cover-up of Unit 731's experiments and inhumane atrocities was assisted by the U.S. government, which shielded the records of the human experiments conducted by Unit 731 doctors and medical personnel in exchange for their experimental records on germ, chemical, and biological warfare.[13] As a result, no Unit members were indicted for prosecution as war criminals, and many went on to have prominent and successful careers in politics, academia, and private businesses.[14] Some

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8:00 AM), https://theintercept.com/2018/05/19/japan-dfs-surveillance-agency/ [https://perma.cc/S7G5-SHKJ].

[10] The term, "Iron Triangle," was used by Lawrence Repeta to represent the Japanese leaders who included, specifically, "the LDP (i.e., Liberal Democratic Party), big business, and national bureaucracy" who refused to enact a transparency law that would otherwise "enable reporters and other busybodies to gain an inside view of their operations." *See* Lawrence Repeta, *The Fight for Open Government in the Heisei Era*, *in* JAPAN IN HEISEI ERA (1989-2019): MULTIDISCIPLINARY PERSPECTIVES 69, 70 (Noriko Murai, et al. eds., 2022). For a list of Japan's predatory policies during WWII, including Japan's war crimes, *see* K. Connie Kang, *Breaking Silence: Exhibit on 'Forgotten Holocaust,' Forgotten Japanese War Crimes,* L.A. TIMES (Aug. 4, 1995, 12:00 AM), https://www.latimes.com/archives/la-xpm-1995-08-04-me-31301-story.html [https://perma.cc/VKQ6-M2NP].

[11] See Justin McCurry, *Japan Compensates Some of Its Hepatitis C Victims*, 371 THE LANCET, 1061-2, March 29, 2008. Secrecy was also common among AIDS or Hepatitis patients, and most victims in the litigation decided not to publicize their names.

[12] *See generally* Fukurai, *supra* note 2. For discussions of moral and ethical considerations, *see* Zhaohui Su, et. al., *The Promise and Perils of Unit 731 Data to Advance COVID-19 Research*, BMJ GLOB. HEALTH 1, 1 (2021), https://gh.bmj.com/content/bmjgh/6/5/e004772.full.pdf [https://perma.cc/87LB-8MYR].

[13] Valerie J. Cranmer, *In Judgment of Unit 731: A Comparative Study of Medical War Crimes Trials After World War II*, 30 J. AM.- E. ASIAN REL., 32, 32 (2023).

[14] Unit 731's commanding officer was Masaji Kitano, who graduated as a medical doctor from Tokyo Imperial University, and its Director and Surgeon General was Shoji Ishii, who graduated from Kyoto Imperial University, both of whom received immunity and were never prosecuted for any war crimes or crimes against humanity. *See* Richard Drayton, *An Ethical Blank Cheque, GUARDIAN*, (May 9, 2005, 7:37 PM),

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former Unit 731 members created Japan's first commercial blood bank and became leaders of Japan's main pharmaceutical and biotechnology firm, the Green Cross Corporation, which manufactured and sold ethical drugs for delivery and administration by Japanese doctors and healthcare workers. Some of their blood product drugs sold included *Fibrinogen-Bank,* contaminated with the Hepatitis C virus, and *Christmassin,* contaminated with the HIV/AID virus, leading to the widespread outbreak in Japan in the 1980s and 1990s.[15] The National Institute of Health (NIH) was responsible for testing for drug safety; however, former Unit 731 members who served as directors at the NIH laboratory produced reports declaring that there were no signs of a dangerous virus in these drugs.[16] Their decisions delayed the production and distribution of safer blood products in Japan, resulting in further spread of the outbreak, and maximizing corporate profit for Green Cross.[17]

After the revelations of the close collaboration between Green Cross, former Unit 731 members, ministry officials, and government personnel, a group of victims and their families, as well as consumer safety advocates, civic organizations, progressive lawyers, and liberal politicians demanded that the Japanese government share its internal documents and ministry records.[18] The strong Open Government Movement in Japan soon developed, leading to significant public debates

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https://www.theguardian.com/politics/2005/may/10/foreignpolicy.usa [https://perma.cc/28RR-DXEK].

[15] *See generally* Eric A. Feldman, *Blood Justice: Courts, Conflict, and Compensation in Japan, France, and the United States*, 34 L. & SOC'Y REV. 651, 651 (2000).

[16] Andrew Pollack, *Japan Arrests Doctor in Case of Bad Blood*, N.Y. TIMES (Aug. 30, 1996), https://archive.nytimes.com/www.nytimes.com/library/national/science/aids/083096sci-aids.html [https://perma.cc/NN3V-7QGQ].

[17] David P. Hamilton, *'Iron-Triangle' Delayed Imports of Heat-Treated Blood Products*, WALL ST. J. (Oct. 8, 1996), https://www.wsj.com/articles/SB844809861782892000. *See also* Asako Saegusa, *Japanese Officials Were Aware of HIV in Blood Products*, 4 NATURE MED. 991, 991 (1998) (suggesting, "Takeshi Abe … headed the Ministry of Health and Welfare's (MHW) AIDS study group …. is suspected of receiving large 'donations' from Green Cross for deliberately delaying the clinical trials of heat-treated products so that the company [Green Cross], which had the greatest market share of untreated blood products in Japan, could continue sales.").

[18] Kevin O'Hanlon, *2 Area Families Sue Over Clotting Medicine: Thousands Claim Drugs AIDS-Tainted*, CIN. ENQUIRER (July 18, 1996); *Green Cross of Japan Settles AIDS Lawsuits*, N.Y. TIMES (Sept. 11, 1996); Richard Nathan, *Japan Settles HIV-Tainted Blood Cases*, 2 NATURE MED. 498, (1996), https://www.nature.com/articles/nm0596-498.pdf [https://perma.cc/56X2-WM9L].The soon-to-be prominent politician Kan Naoto, one-time NGO activist and a politician who joined the small New Party Sakigake, headed the investigative group on the HIV epidemic and demanded more open government with greater transparency and accountability.

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concerning the promotion of government transparency, accountability, and civic engagement in government affairs all across Japan. In 1999, the Japanese government created the Justice System Reform Council (JSRC) to enhance government transparency, fairness of the justice system, efficiency of legal procedures, and public access to justice.[19] In the same year, the government also passed the "Act on Access to Information Held by Administrative Organ," which was Japan's first Freedom of Information Act (FOIA), effective in 2001. However, the Japanese government also attempted to maintain its rights to secrecy by limiting the FOIA's legal outreach through the insertion of six broad categories of FOIA exemptions from information disclosure, including: (1) Individual privacy information; (2) business information; (3) national security and diplomacy information; (4) criminal investigation information; (5) deliberative process information; and (6) agency operations.[20] In addition to these broad and elastic categories of special exemptions, Japan's FOIA also featured significant procedural limitations for full information disclosure, including: (1) requiring high user fees, (2) allowing broad government discretion to delay information disclosure; and (3) permitting traditional administrative procedures in relation to discarding government documents and agency records.[21]

A. *The Structure of the Paper*

This paper examines the history of Japan's Open Government advocacy movement, evaluates the effectiveness of the Freedom of Information Act, and explores such other measures as the role of whistleblowers in further promoting transparency and accountability in Japan. The first section focuses on the history of Japan's Open Government advocacy movement, as led by three prominent Japanese and

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[19] *See generally* Hiroshi Fukurai, *A Step in the Right Direction for Japan's Judicial Reform: Impact of the Justice System Reform Council Recommendations on Criminal Justice and Citizen Participation in Criminal, Civil, and Administrative Litigation*, 36 HASTINGS INT'L & COMPAR. L. REV. 517, 517 (2013).

[20] Lawrence Repeta & David M. Schultz, *Japanese Government Information: New Rules for Access: The 2001 Information Disclosure Law, and Comparison with the U.S. FOIA*, NAT'L SEC. ARCHIVE (May 24, 2002), https://nsarchive2.gwu.edu/nsa/foia/japanfoia.html [https://perma.cc/9MFC-CJ85]. Repeta and Schultz pointed to the loopholes of the exemption categories, including the general exemption for agency operations, because this is "an omnibus provision protecting a broad scope of information concerning the operations not only of agencies directly subject to the law but also other national and local entities."

[21] Lawrence Repeta, *Mr. Madison in the Twenty-First Century: Global Diffusion of the People's 'Right to Know'*, *in* SOFT POWER SUPERPOWERS: CULTURAL AND NATIONAL ASSETS OF JAPAN AND THE UNITED STATES 252 (Watanabe Yasushi & David L. McDonnell eds., 2008) (Japan's FOIA requires "high user fees, and broad government discretion to delay disclosure in sensitive cases, [and] Japan's law generally provides a poor model for other countries aspiring to build open governments.").

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American socio-legal advocates: Hiroshi Miyake, Lawrence Repeta, and Setsuo Miyazawa. Both Miyake and Repeta played a leadership role in Japan's Open Government Movement, making significant contributions to the passage of the FOIA legislation, and helping to attain greater democratic control of government decision-making and policies. Miyazawa contributed to government accountability and transparency, as his work critically examined "unethical" prosecutorial and interrogatory methods used in Japan's criminal justice system, including public prosecutors' use of jail as a "substitute prison" to coerce "confessions" by criminal suspects, thereby maintaining a near 100% conviction rate in Japan's criminal adjudication. His research led to greater transparency in Japan's investigative procedures by police and public prosecutors.

The second section of this paper, explores the role of the FOIA and additionally examines the role of public sector whistleblowers, another effective means of promoting transparency, and accountability through exposing unethical, if not illegal, government actions and secret operations. The combined use of both FOIA and whistleblowing has historically led to more expansive exposure of government secrets, misconduct, corruption, and illegal actions. The FOIA request has recently been seen as a useful means by which government agencies, such as the FBI, have sought to detect the secret identity of public sector whistleblowers and to pursue subsequent criminal prosecution, using the 1917 Espionage Act, which prohibits public servants from releasing classified governmental information to the public. The recent government scrutiny of FOIA requests, for example, led to the revelation of the identity of Terry James Albury, an African-American secret agent for the FBI, and a whistleblower who revealed classified FBI guidelines on the use of racial and ethnic profiling to exploit government informants.[22] The potential revelation of the secret identity of whistleblowers and their subsequent prosecution had a chilling effect on potential whistleblowers who otherwise felt compelled to expose classified government information because of their moral and ethical commitment to uphold the principles of racial justice and due process.

The final section of this paper explores strategies for greater expansion of government information disclosure, and suggests possible future paths to greater transparency, accountability, and civic engagement in government decision-making in Japan, the U.S., and beyond.

II. THREE PIONEERING ADVOCATES OF JAPAN'S OPEN GOVERNMENT MOVEMENT

Many Japanese and American socio-legal scholars and political

[22] Janet Reitman, *I Helped Destroy People*, N.Y. TIMES (Sept. 1, 2021), https://www.nytimes.com/2021/09/01/magazine/fbi-terrorism-terry-albury.html [https://perma.cc/N8D4-QDG3].

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activists have contributed to Japan's Open Government advocacy movement. This paper focuses on three prominent scholars who have made significant contributions to promoting government transparency, accountability, and citizen participation in government activities: prominent Japanese attorney, Hiroshi Miyake; American attorney and former Meiji University and Omiya Law School Professor Lawrence Repeta; and UCLSF Professor Setsuo Miyazawa, a renowned Japanese legal scholar and prominent leader of East Asian socio-legal scholarship. All three were involved in the Japanese law symposium at UCLSF, in which Miyake and Repeta presented critical assessments of past successes and failures, as well as future challenges and strategic visions necessary to further advancing political and civil rights struggles for the establishment of even greater government transparency and accountability in Japan. Setsuo Miyazawa has also been deeply involved in public debates about the transparency and accountability in Japan's criminal justice system. Miyazawa brought significant public and academic attention to the examination of the possibility of police misconduct and the inequitable arrangement of investigative procedures by government prosecutors in Japan's policing and prosecutorial processes. All three activists have played significant roles as powerful legal advocates to help sustain and support the Open Government Movement in Japan, and to establish democratic measures to hold the Japanese government accountable for its policies, decisions, and actions.

A. *Hiroshi Miyake*

Hiroshi Miyake is one of Japan's leading progressive attorneys, serving as the President of the *Daini* Tokyo Bar Association, one of Japan's largest bar associations, which is headquartered in Tokyo. Miyake also served as a former secretary of the Japan Civil Liberties Union (JCLU). As one of the key leaders of the Open Government Movement in Japan, Miyake spearheaded, along with Repeta, civic organizers, and other progressive lawyers, the advocacy of government transparency and greater accountability dating back to the 1980s. In order to strengthen Japan's Open Government Movement and pressure the Japanese government to enact its own FOIA legislation, Miyake and other advocates helped bring America's well-known consumer crusader Ralph Nader to Japan in 1989, and organized meetings with grassroots activists and progressive politicians. Ralph Nader had gained national attention with the publication of his 1965 book, which criticized the American automotive companies in relation to critical safety issues, and led to the passage of the National Traffic and Motor Vehicle Safety Act in 1966.[23] Since the late 1960s, Ralph Nader has been involved in various forms of grassroots political

[23] *See generally* RALPH NADER, UNSAFE AT ANY SPEED: THE DESIGNED-IN DANGERS OF THE AMERICAN AUTOMOBILE (1965).

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activism, furthering his advocacy for consumer rights, environmentalism, corporate accountability, government transparency, and public access to classified information.[24] Ralph Nader, together with progressive groups of young law students and volunteers who called themselves "Nader's Raiders," helped promote the Open Government Movement to hold powerful corporations and government institutions accountable for their actions and decision-making.[25]

In response to Japan's long refusal to establish a robust system of open government policies, a group of citizen activists, legal professionals, and scholars formed the grassroots group called "The Citizens' Movement for a Freedom of Information Act" in 1980, and established an organization called the "Information Clearing House" to pursue the establishment of the information disclosure system and related practices in Japan.[26] Following the passage of FOIA legislation, this progressive organization was transformed in 1999 into a new organization called the Access-Info Clearinghouse Japan (AICJ) whose mission was to guarantee citizens' right to know in public institutions.[27] AICJ was led by Miyake, Repeta, and other citizen activists who had been working on information disclosure in public institutions. The AICJ has relied on strategic uses of litigations and administrative appeals to demand information disclosure and prevent the destruction of government records.

In 2009, Miyake, the AICJ, and its supporters helped secure the passage of the Public Records and Archives Management Act in order to ensure the proper management of administrative documents and their preservation by government agencies.[28] However, the Japanese administration led by LDP's Prime Minister Shinzo Abe later enacted the Act on the Protection of Specifically Designated Secrets (or the New State Secrecy Law, NSSL) in 2013, in order to protect from public disclosure specific kinds of information, ranging from the Self-Defense Forces to diplomacy, terrorism, and more expanded categories of "national security"

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[24]Janice Fuhrman, *Consumer Advocate Urges Greater Protection for Japanese*, ASSOCIATED PRESS (Sept. 14, 1989).

[25] Jeffrey Alan Johnson, *The Apology of Nader's Raiders: Third Parties, Speech Acts, and Moral Obligations in the Voting Booth*, 2 FORUM 1, 1 (2004).

[26] For AICJ's history, *see Dantai ni tsuite [About the Group]*, https://clearing-house.org/?page_id=7 [https://perma.cc/Y3WV-F7Y9] (visited Jan. 10, 2024). The English translation of its introduction states, "The Citizens' Movement for a Freedom of Information Act was established in 1980 to specialize in enacting Japan's first information disclosure law for public institutions, but in response to the enactment of the Freedom of Information Act, the organization was reorganized and established in 1999. It took its current name."

[27] *Id.*

[28] Kōbunsho kanri-hō [Public Records and Archives Management Act], Law No. 66 of 2009 (Japan).

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domains.[29] It is important to note that this important bill was drafted in secret in the administrative offices of government, not by elected representatives in the national legislature.[30]

Miyake's struggles to strengthen Japan's grassroots movement for greater access to classified information continue today. Despite the passage of Japan's FOIA in 1999, the Japanese government still managed to include and expand special exemptions. For instance, it placed significant broad discretion in relation to possible information disclosure in the hands of state agencies and government personnel, especially when information was perceived to "risk unjustly causing confusion among the people."[31] Miyake's open government activities also involved his fight to obtain, not only the broader public disclosure of government information, but also proprietary information and trade secrets of powerful corporations that were not directly covered under the FOIA provision. Government contractors are private corporations or individuals that enter into agreements with government agencies to provide services or expertise. These contracts were established through a formal procurement process which typically includes corporate proprietary information in proposals to government agencies, which may require the disclosure of contractors' trade secrets during the course of performance of governmental contacts. Such proprietary information is also subjected to the Freedom of Information action that requires the release of government records upon request. Without legal provisions that were specifically tailored to prohibit releases of certain proprietary secrets, FOIA made no distinction between information created by the government agency and those collected by the same or related agencies from government contractors, thereby making agency-kept information subject to a FOIA request.

1. Public Access to Proprietary Information of Private Corporations

Miyake has worked on important legal cases related to the disclosure of classified information, one of which involved the public disclosure of proprietary information of powerful corporations involved in the crash of Japan Airlines Flight 123 on August 12, 1985, an event that killed 520 of its 524 passengers and crew members.[32] This still stands as

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[29] Lawrence Repeta, *A New State Secrecy Law for Japan?* 11 ASIA-PAC. J.: JAPAN FOCUS 1, 1 (2013), https://apjjf.org/2013/11/42/lawrence-repeta/4011/article.

[30] Molly M. Hofsommer & Morton H. Halperin, *Japan's Secrecy Law and International Standards*, 12 ASIA-PAC. J.: JAPAN FOCUS 1, 1 (2014), https://apjjf.org/2014/12/37/Morton-H.-Halperin/4183/article.html [https://perma.cc/A3L7-4P29].

[31] Gyōsei kikan ga hoyū suru jōhō no kōkai-hō [Law Concerning Access to Information Held by Administrative Organs], Law No. 42 of 1999, art. 5, para 5 (Japan).

[32] Jake Hardman, *Wreckage Still Being Discovered: The Story of Japan Airlines Flight 123*, SIMPLE FLYING (Nov. 26, 2022), https://simpleflying.com/japan-airlines-

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the world's deadliest single-aircraft accident.[33] Soon after, a Boeing 747 jet crashed into a mountain in 1985. The families of 80 crash victims filed a lawsuit against Boeing and Japan Air Lines, which owned and operated the jetliner, in King County Superior Court in Seattle, WA, where Boeing was headquartered.[34] This accident took place prior to the passage of Japan's FOIA in 1999, which allows exemptions to the requirement of disclosing documents in a FOIA lawsuit, including a private company's proprietary and confidential information.

Exemption 4 of the U.S. FOIA, which was established in 1966, also pertains to trade secrets and commercial or financial information.[35] The exemptions were not absolute, however, in cases where a federal agency, including the Federal Aviation Administration (FAA), faced a FOIA action to release a company's confidential information. The court was propelled to review the federal agencies' decision to withhold classified information and to decide whether the FOIA exemptions were valid in a given case, after carefully assessing the balance between the public's right to know and the protection of corporate interests such as proprietary intellectual property and trade secrets.

The FOIA action involved in similar aircraft crashes showed that the FOIA exemptions were not absolute in relation to releasing secret trade and proprietary information. For example, the recent Boeing aircraft crashes in 2018 and 2019, involved the exception to the FOIA exemption rule given to corporations' proprietary and confidential information. The Boeing 737 MAX aircraft that crashed into Java Sea from Jakarta in 2018 killed 189 passengers and crew members.[36] In 2019, there was another Boeing 737 MAX aircraft crash that resulted in the death of 157 people. Later, after a Boeing plunged into a field outside of Addis Ababa, Ethiopia,

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flight-123-story [https://perma.cc/69Q4-G7FQ].

[33] *Id*.

[34] Laura Parker, *Air Crash Lawsuits a Crash of Customs*, WASH. POST (Mar. 19, 1987, 7:00 PM), https://www.washingtonpost.com/archive/politics/1987/03/20/air-crash-lawsuits-a-clash-of-customs/ee94e4be-6933-4798-bc48-25412a65fcbc/ [https://perma.cc/9E4M-7A2K].

[35] *See FOIA Guide, 2004 Edition: Exemption 4*, U.S. DEP'T JUS., https://www.justice.gov/archives/oip/foia-guide-2004-edition-exemption-4#:~:text=Exemption%204%20of%20the%20FOIA,government%20and%20submitters%20of%20information 204%20of%20the%20FOIA,government%20and%20submitters%20of%20information ("Exemption 4 of the FOIA protects 'trade secret and commercial or financial information obtained from a person [that is] privileged or confidential.").

[36] Stanley Widianto, et al., *All 189 Onboard Feared Dead After Indonesian Plane Crashed into Sea*, WASH. POST (Oct. 29, 2018, 9:41 PM), https://www.washingtonpost.com/world/asia_pacific/indonesian-plane-crashes-into-the-sea-with-more-than-180-on-board/2018/10/29/9166baae-db4c-11e8-b3f0-62607289efee_story.html [https://perma.cc/TP8K-BZB5].

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the Boeing Company was forced to admit to defrauding the U.S. FAA by concealing safety problems with the Boeing 737 MAX.[37] Boeing agreed to pay $2.5 billion in fines and compensation to airlines and relatives of crash victims in 2021.[38] Prominent consumer advocate and lawyer Ralph Nader's 24-year-old grandniece was also killed in the 2019 crash, and the victim's families filed the FOIA request. They also sought out possible whistleblowers to expose internal documents beyond what was required of the FOIA disclosure.[39]

Ralph Nader had helped advocate for and strengthen, not only the FOIA in the U.S., but also the Whistleblower Protection Act, the Consumer Product Safety Act, the Clean Air and Clean Water Acts, and other consumer-protection legislation. Nader also helped create the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA).[40] The disclosed information revealed that the crashed Boeing MAX aircraft was based on older generations of Boeing 737s and was more fuel efficient than the Boeing 747 which crashed in Japan, but it has a larger engine, thus affecting the aerodynamics. To help deal with aerodynamics, disclosed information revealed that Boeing built a software system called Maneuvering Characteristics Augmentation System (MCAS), the malfunction of which led to both Boeing MAX crashes.[41] More recently, in January 2024, another Boeing 737 MAX suffered an in-flight blowout, in which the door plug blew off during the fight. The incident came after other safety issues had also been linked to Boeing's MAX line of aircraft, further heightening concerns about corporate malfeasance in inspection procedures to ensure the jet's structural integrity and flight safety.[42]

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[37] David Shepardson et. al., *Boeing to Pay $2.5 Billion to Settle U.S. Criminal Probe into 737 MAX Crashes*, REUTERS (Jan. 8, 2021), https://www.reuters.com/article/idUSKBN29D07P/#:~:text=WASHINGTON%2FSEATTLE%2FCHICAGO%20(Reuters,of%20its%20737%20MAX%20jetliner.

[38] Andy Pasztor, *With Personal Connection to Crash, Ralph Nader Takes on Boeing: The Longtime Activist, Who Lost a Young Relative in the Ethiopian Airlines Crash, Puts Out a Call for Whistleblowers*, WALL ST. J. (Mar. 20, 2019), https://www.wsj.com/articles/with-personal-connection-to-crash-ralph-nader-takes-on-boeing-11553120235

[39] *Id*.

[40] Rob Brunner, *Ralph Nader is Opening Up About His Regrets*, WASHINGTONIAN (Nov. 3, 2019), https://www.washingtonian.com/2019/11/03/ralph-nader-is-opening-up-about-his-regrets/ [https://perma.cc/6EJT-WCAE].

[41] William Langewiesche, *What Really Brought Down the Boeing 737 MAX?*, N.Y. TIMES MAG. (Sept. 18, 2019), https://www.nytimes.com/2019/09/18/magazine/boeing-737-max-crashes.html [https://perma.cc/MB8U-QMDP].

[42] Joel Rose, *The FAA Says Airlines Should Check the Door Plugs on Another Model of Boeing Plane,* NPR (Jan. 22, 2024),

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Headquartered in Seattle, Washington, the Boeing Company started as an airmail delivery service in the 1920s and later began building military fighter aircrafts and bombers,[43] including the Boeing B-29, which famously dropped two atomic bombs in Hiroshima, and in Nagasaki, in August 1945, and also assisted in the destruction of hundreds of Japanese towns and cities during the Second World War, including, for example, the firebombing of Tokyo on March 10, 1945 which killed 100,000 people, mostly women, children, and the elderly.[44] Following the war, the Boeing Company transformed its "modified bomber" into peacetime civilian use and went on to become the leading corporation in the world to design, manufacture, and sell commercial airplanes, jetliners, rockets, missiles, and satellites.[45] The CIA's internal report, "Japan's Airline Industry: A Takeoff for Deregulation?" which was declassified in August 1985, the same month and year in which the fatal crash of Japan Airline Flight 123 occurred, provided a detailed account of CIA intelligence assessments of Boeing's business dealings in East Asia, including the Japanese government led by LDP Prime Minister Yasuhiro Nakasone. His administration pushed for greater aviation deregulation in Japan in order to reduce government regulations and controls over the airline industry. The CIA reported that thanks to Nakasone's work in prioritizing market forces and foreign competition as drivers of efficiency and innovation, Japan's deregulation contributed to $255 million in gains for the Boeing Company, with Japan Airlines' plans to purchase 12 Boeing 747s and 9 Boeing 767s by 1989.[46] For All Nippon Airline (ANA), which was JAL's main

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https://www.npr.org/2024/01/22/1226093503/boeing-plane-faa-door-plugs-737-900 [https://perma.cc/SLS4-C4QN].

[43] For the history of Boeing, *see generally* Martin W. Bowman, BOEING 742: A HISTORY DELIVERING THE DREAM (2015).

[44] US Airforce General Curtis LeMay led the formation of grand designs for the U.S. bombing campaign in Japan during WWII. *See* Curtis LeMay & Bill Yenne, SUPERFORTRESS: THE BOEING B-29 AND AMERICAN AIRPOWER IN WORLD WAR II (2006).

[45] Adam Mann, *The Boeing Company: From Rockets to Commercial Crew*, SPACE.COM (Oct. 25, 2021), https://www.space.com/the-boeing-company [https://perma.cc/Y99Q-RE5S].

[46] CENTRAL INTELLIGENCE AGENCY, JAPAN AIRLINE INDUSTRY: A TAKEOFF FOR DEREGULATION? 3 (Aug. 1985) https://www.cia.gov/readingroom/docs/CIA-RDP86T00590R000300440002-3.pdf [https://perma.cc/CC5N-PGJN] [hereinafter CIA]. The report indicates that the JAL group on the LDP's Aviation Committee "essentially pushes JAL's interests and opposes pressure to break the airline's monopoly on regularly scheduled international flights. For the last three decades JAL supporters have dominated the committee, and they are likely to put up a hard fight against efforts by ANA and TDA to win access to new passenger routes established under the May US-Japan provisional agreement." *Id*. at 1. *See* AIRCRAFT ACCIDENT INVESTIGATION COMMISSION, MINISTRY OF TRANSPORT, AIRCRAFT ACCIDENT INVESTIGATION REPORT (June 19, 1987), https://baaa-acro.com/sites/default/files/2020-04/JA8119.pdf [https://perma.cc/GG8T-3M6M] [hereinafter AAIC] (an English translation of the Japanese Aircraft Accident Investigation

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competitor in the airline commercial market, the CIA estimated another $190 million gain for Boeing from ANA's purchase of 10 Boeing 767s and 2 Boeing 747s by 1988.[47] According to CIA, Boeing saw the Japanese airline commercial industry as one of the most profitable markets in East Asia.

After the 1985 deadly crash in Japan, the Japanese government investigation commission submitted its 1987 report, determining that the crash was caused by improper repairs of the formerly damaged body of the aircraft, a Boeing 747-100SR, and its rear pressure bulkhead, the rupture of which blew off the craft's vertical stabilizer and destroyed its hydraulic systems.[48] The investigation also revealed that this Boeing aircraft was a high-density variant of the original Boeing 747-100 model, which was specifically designed to operate on Japan's busy domestic corridors.[49] In 1978, the same Boeing aircraft that was to crash in 1985 also suffered a severe tail strike while landing at Itami Airport in Osaka, and among 394 people, 25 suffered injuries of which 23 were minor and 2 serious.[50] Miyake and his lawyers had fought for the information disclosure related to the 1985 crash, including information on the U.S. military and Japan's Self-Defense Forces that held a joint military training exercise at nearby Suruga Bay on the same day of the crash. While it was also known that the Self-Defense Force's target practice involved targeting a civilian aircraft, the Japan Transport Safety Board investigative summary report rejected that the accident "was caused by a missile or a target aircraft of the Self-Defense Forces, but it has been confirmed that the red object near the tail debris is part of the main wing, and the debris may contain gunpowder, explosives, etc. No components were detected and there is no basis to suspect a missile."[51] Image analysis later revealed, however, that a

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Commission's report regarding the Japan Air Line's 1985 aircraft crash).

[47] CIA, *supra* note 46, at 2.

[48] AAIC, *supra* note 46, at 129 ("The initiation and propagation of the fatigue cracks are attributable to the improper repairs of the said bullhead conducted in 1978, and it is estimated that the fatigue cracks having not been found in the later maintenance inspection is contributive to their propagation leading to the rupture of the said bulkhead"); *See also* Gemma Jones, *Horror Plane Crash into Mountain Where Four from 533 Miraculously Survived*, DAILY STAR ONLINE (Aug. 12, 2023), https://www.dailystar.co.uk/news/world-news/twin-toddlers-found-foaming-mouth-32041407?int_source=nba. [https://perma.cc/L8RN-9T98].

[49] Hardman, *supra* note 32.

[50] AAIC *supra* note 46, at 259 ("In this accident two passengers were seriously injured and 23 passengers were slightly injured").

[51] Un'yu Anzen Iinkai [Japan Transport Safety Board], Kokudo Kōtsūshō [Ministry of Land, Infrastructure, Transport and Tourism], *Nihonkōkū 123-bin no osudakayama tsuiraku jiko ni kakaru kōkū jiko chōsa hōkoku-sho ni tsuite no kaisetsu, [Commentary on the Aviation Accident Investigation Report Regarding the Crash of Japan Airlines Flight 123 at Mount Osutaka]* (2011),

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mysterious orange object was flying near JAL Flight 123 at the time of the accident, as there was an audio recording of the pilot indicating something "Orange Air" near the plane, which was rewritten as "all engines" in the transcript.[52] The appendix to the accident investigation report published on the Japan Transport Safety Board website in February 2013 also included a description of the vertical tailfin stabilizer's breakage due to abnormal external force impact, and this finding was not dismissed as a completely unlikely possibility.[53] Furthermore, the possibility of external force was not ruled out when General Manager of the Maintenance department Hiroaki Kono stated on August 19, 1985, that there was a possibility that the vertical stabilizer broke due to some external force, and that the bulkhead was damaged as a result.[54] Miyake argued that the key to understanding the true causes of the crash lay in disclosing the complete information contained in cockpit voice recorders and flight recorders.

Given the fact that wreckages of Boeing 747 are still being discovered, Miyake continues to demand information disclosure to reveal the true causes of the fatal crash, including the release of the crash plane's cockpit voice recorder and flight recorder.[55] In June 2023, however, Tokyo High Court dismissed the request for the information disclosure.[56] After the court decision, Attorney Miyake stated in a press conference that "with so many [new information and] things coming to light, it is important to clarify the truth of the incident once again."[57] Without this, said Attorney

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https://www.mlit.go.jp/jtsb/kaisetsu/nikkou123-kaisetsu.pdf [https://perma.cc/8XQP-5HNZ] [hereinafter *Commentary*].

[52] TOKO AOYAMA, NIKKŌ 123-BIN TSUIRAKU NO SHIN JIJITSU: MOKUGEKI SHŌGEN KARA SHINSŌ NI SEMARU [NEW FACTS ABOUT THE CRASH OF JAL FLIGHT 123: APPROACHING THE TRUTH FROM EYEWITNESS TESTIMONY] (2017); *See also* TOKO AOYAMA, NIKKŌ 123-BIN TSUIRAKU JIKEN: JAL SAIBAN [JAPAN AIRLINES FLIGHT 123 CRASH CASE: JAL TRIAL] (2022).

[53] AAIC *supra* note 46, at 88 (indicating part of Cockpit conversations from 24'39" to 24'57" (CAP "Something exploded. Squawk 77". . . CAP "Engine?", COP "Squawk 77", F/E "All engine..." COP "Please take a look at this", F/E "Eh, ***all engine***..." (emphasis added), COP "Would you like to see the hydro pressure?", CAP "Something exploded"). (The abbreviation indicates, respectively, CAP for "Captain"; COP for "First Officer"; and F/E for "Flight Engineer").

[54] Ukeru Magosaki, Nihon Gaikō to Seiji no Shōtai: Aratamete Nikkō 123-bin Gekitsui Jiken' o Kangaeru Boisurekōdā Hi Kaiji no Riyū wa Nanina No Ka [The True Nature of Japanese Diplomacy and Politics: Thinking Again About the Incident of Japan Airlines Flight 123 Crash], Nikkan Gendai, (Mar. 2, 2023), https://www.nikkan-gendai.com/articles/view/news/319468 [https://perma.cc/M9BL-KKZ7].

[55] *Nikkō-Ki No Rekōdā Kaiji Soshō, 2-Shin Mo Izoku-Gawa No Seikyū O Kikyaku Tōkyō Kōsai Hanketsu [Second Trial in Japan Airlines Jet Recorder Disclosure Lawsuit Dismisses Family's Claim: Tokyo High Court Ruling],* JŌMŌ SHIMBUN (June 2, 2023), https://www.jomo-news.co.jp/articles/-/293161 [https://perma.cc/3GB8-D4AD].

[56] *Id*.

[57] *Id*.

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Miyake, "the bereaved family is stuck in time as it was in that case and that information disclosure is necessary [to bring the case to closure]."[58]

B. Lawrence Repeta

Lawrence Repeta, another prominent attorney and former Meiji University and Omiya Law School professor in Japan, presented at the Japanese Law symposium on his decade-long participation in Japan's Open Government Movement. His collaborative efforts with Miyake and other Japanese lawyers made the Japanese government more open, transparent and accountable for their policies and programs.[59] Repeta is best known in Japan as the plaintiff in a historic lawsuit that opened Japan's conservative and closed criminal trials to free reporting.[60] In the early 1980s, Repeta attended tax trials held in Japanese courts as part of his research on Japanese tax law but was repeatedly denied permission to take notes by the presiding judge. Only members of exclusive judiciary press clubs were allowed to take notes, and these clubs have excluded foreign reporters as well as Japanese journalists from smaller newspapers and magazines. Given the tradition in Japanese courts to limit the freedom of reporting and prohibit the act of note taking by public spectators in the courtroom, Repeta decided to file a lawsuit against the Japanese government. Attorney Miyake worked closely with Repeta on this historic lawsuit, which had the support of the Japan Civil Liberties Union (JCLU). Although the lawsuit was rejected by both the Tokyo District Court and the Tokyo High Court, it attracted significant public attention and sparked a national debate on the issue of transparency in the Japanese court system. This lawsuit came to be known as the "Repeta Case," which made its way to the Japanese Supreme Court.[61] Prior to this lawsuit, Japan had no freedom of information law or formal administrative procedure for demanding the disclosure of government documents or classified information; even privileged members of court press clubs, known as "Kisha Kurabu," were denied access to court documents and were only

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[58] NIKKŌ 123-BIN TSUIRAKU NO SHINSŌ O AKIRAKA NI SURU KAI [JAL FLIGHT 123 GROUP TO UNCOVER THE TRUTH BEHIND THE CRASH], DAI IKKAI KŌTŌ BENRON KIJITSU HŌKOKU [FIRST ORAL ARGUMENT REPORT], (June 28, 2021), https://jalflight123.wixsite.com/mysite/裁判関連情報 [https://perma.cc/2RQS-FQSG].

[59] For the government secrecy and destruction of government documents, *see generally* Lawrence Repeta, *Backstory to Abe's Snap Election: The Secrets of Morimoto, Kakei and the 'Missing' Japan SDF Activity Logs*, 15 ASIA-PAC. J. 1 (Oct. 15, 2017), https://apjjf.org/2017/20/Repeta.html [https://perma.cc/27KM-L3WL].

[60] Colin P.A. Jones, *When Open Minds Fight Closed Courts in Japan*," JAPAN TIMES (July 16, 2017). https://www.japantimes.co.jp/community/2017/07/16/issues/open-minds-fight-closed-courts-japan/ [https://perma.cc/6UST-ZJ89].

[61] David E. Sanger, *Tokyo Journal: U.S. Lawyer Makes Japan Sit Up and Take Note*, N.Y. TIMES (Mar. 16, 1989), at A4.

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allowed to take photographs before the start of a trial.[62] At the same time, the privileged press club journalists had close relations with government officials and spokespersons and were given exclusive access to press conferences, briefings, and official events organized by the government, ministries, and the political parties with which the press club had historically cultivated special relationships.[63]

In the Japanese Supreme Court appeal hearing in 1989, Repeta urged the justices to "set a democratic standard of openness that will ultimately be followed by other branches of the Japanese government."[64] In March 1989, the Japanese Supreme Court ruled 15-0 that the ban on note-taking violates a constitutional guarantee of public trials, thereby allowing anyone to take notes at all levels of the Japanese court system.[65] For the first time in Japan's legal history, Japan's highest court decided to overturn Japan's customary prohibition on note-taking by outside observers, including foreign journalists in public court hearings.[66] Repeta had developed strong ties to the Japanese legal community, and served as law professor and socio-legal specialist in Japanese educational institutions, as the Program Director of Temple University Law school and Vice President of Temple University Japan; as Law Professor at Omiya Law School, where Professor Miyazawa served as Vice President; and as Specially Appointed Professor at Meiji University in Tokyo, Japan.

1. Freedom of Expression: The Prisoners of Conscience

Repeta has also been active as a renowned human rights lawyer in Japan. His 2022 book, *Japan's Prisoners of Conscience: Protest and Law During the Iraq War*,[67] draws its title from the phrase used by Amnesty International founder Peter Benenson in his article, "The Forgotten

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[62] *Id*.

[63] Jeff Kingston, *Watchdog Journalism in Japan Rebounds but Still Compromised*, 77 J. ASIAN STUD. 881 (2018).

[64] David Thurber, *U.S. Lawyer Argues in Supreme Court for Rights to Take Notes*, THE ASSOCIATED PRESS, (Jan. 25, 1989).

[65] David Butts, *Japanese Court Rules in Favor of Seattle Lawyer*, UNITED PRESS INT'L, (Mar. 8, 1989). The ruling, however, continued to allow the prohibition of the drawing of sketches, photography, video or audio taping of court proceedings.

[66] Lawrence Repeta et al., *I Can't Take Notes: The Men Who Challenged the Supreme Court*, (Jun'ichi Hamada, trans.) (Yuhikaku, 1991) (Lawrence Repeta・浜田純一（訳）・三宅弘・山岸和彦・鈴木五十三・秋山幹雄・喜多村洋一『MEMO がとれない：最高裁に挑んだ男たち』有斐閣（1991 年）).

[67] LAWRENCE REPETA, JAPAN'S PRISONERS OF CONSCIENCE: PROTEST AND LAW DURING THE IRAQ WAR (Routledge 2022).

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Prisoners," which appeared in the British newspaper *The Observer* in 1961.[68] Benenson had defined "prisoners of conscience" as those who were imprisoned solely for peacefully sharing their beliefs, exercising their right to freedom of expression, and engaging in nonviolent anti-government political actions.[69]

Repeta's work offered a chronological account of the criminal proceedings of three Japanese peaceful protesters who distributed anti-war flyers in the eight four-story apartment buildings of the Tachikawa Self-Defense Forces (SDF) base in Tokyo. They were members of the political group called "Tachikawa Self-Defense Forces Monitoring Tent Village (Tent Village)" formed when the former U.S. military base in Tachikawa was converted to an SDF base in the early 1970s. Tent Village members believed that the mere existence of the SDF violated the Japanese Constitution and continued with their protest marches as well as publishing a newspaper.[70] These three protesters, who came to be known as the "Tachikawa-Three," placed flyers in the mailboxes of the SDF apartment residents, criticizing the Japanese government's decision to send SDF personnel to Iraq in support of the U.S. military operation there, and urging SDF members to refuse deployment. The leaflet declared that "In launching a preemptive attack, the U.S. started an illegal war in violation of all international law. The U.S. government justified the invasion with claims that Saddam Hussein possessed 'weapons of mass destruction' and was allied with Al-Qaeda, but evidence for these claims has yet to be found."[71] Millions of protesters from the streets of Tachikawa, Tokyo to San Francisco, London, Munich, Paris, Moscow, Cairo and other major cities around the globe demonstrated against the U.S. invasion of Iraq in the beginning of 2003.[72] Repeta argued that the SDF dispatchment to Iraq marked a historic shift in Japan's post-WWII security policy, and was a clear violation of Article 9 of the Japanese Constitution, becoming the first time in the post-war era that Japanese forces were sent to a region of military conflict overseas.[73]

In February 2003, a month after they distributed their flyers, the

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[68] Peter Benenson, *The Forgotten Prisoners*, THE OBSERVER (May 28, 1961).

[69] *Id*.

[70] *Id*. at 9.

[71] Repeta et al., *supra* note 66, at 4.

[72] *Bush, Saddam Brace for Possibility of War*, CNN (Mar. 16, 2003), https://www.cnn.com/2003/WORLD/meast/03/15/sprj.irq.main/index.html [https://perma.cc/L6N9-5UQG]; *see also Antiwar Rallies Across the World*, CNN (Mar. 15, 2003), http://www.cnn.com/2003/WORLD/europe/03/15/sprj.irq.protests/index.html [https://perma.cc/N47J-2XQ8].

[73] NIHONKOKU KENPŌ [KENPŌ] [Constitution], art. 9 (Japan) ("Japanese people forever renounce war … [and] use of force as means of settling international disputes.").

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Tachikawa-Three were arrested on suspicion of criminal trespass at the SDF apartment buildings, which were owned by Japanese Defense Agency (JDA). During 75 days of detention in Tokyo suburb police jails, the Tachikawa-Three were united in exercising their constitutional right to remain silent rather than confessing and expressing "remorse" for their action in return for the lenient disposition of their charges. Repeta noted that Japanese prosecutors typically treated criminal suspects leniently if they confessed and expressed contrition during interrogation at police jails, which were often dubbed as a substitute prison in which prosecutors could coerce the extraction of confessionary statements under conditions of extreme psychological and physical duress.[74] They were eventually released on bail, and in December 2004, the Tokyo District Court ruled that the three defendants were not guilty. Upon an appeal by the prosecution, the Tokyo High Court overturned the acquittal and convicted them in December 2005, and the Supreme Court upheld their conviction in April 2008.[75] Three months after the Supreme Court decision, Japan's Air Self-Defense Forces finally returned to Japan in July 2008, ending its oversea mission in the Iraq war zones.[76] The Japanese Defense Ministry disclosed that 19 of the SDF personnel returning from Iraq had committed suicide.[77] The LDP government had also decided to send SDF troops to the Indian Ocean for the Afghan War and increased their dispatchment to Iraq to continue SDF's logistical support of the U.S. military. It was later revealed that the suicide rate of SDF members who had been sent abroad reached a level up to 18 times than that of the general Japanese population.[78]

The Open Government Movements led by Miyake and Repeta for the last several decades have promoted the democratic principles of freedom of information, and of government transparency and accountability in policies and actions. Their advocacy for open government has also helped to change the legal landscape of Japan's criminal justice system, to enact Japan's Freedom of Information Act (FOIA), and to open up the Japanese courtroom to public and foreign journalists and observers. Despite this significant progress evident in Japan, Repeta and Miyake both suggest that there are still areas that can

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For his analysis of substitute prisons (daiyou kangoku), *see* Lawrence Repeta, *Transfer of Power at Japan's Justice Ministry*, 7 ASIA-PACIFIC J.: JAPAN FOCUS 1 (Nov. 2, 2009); Lawrence Repeta, *U.N. Committee Faults Japan's Human Rights Performance, Demands Progress Report on Key Issues*, ASIA-PAC. J.: JAPAN FOCUS 1 (May 17, 2009).

[75] Repeta et al., *supra* note 66, at 154-56.

[76] *Id.* at 177.

[77] *54 SDF Members Commit Suicide After Returning from Abroad*, JAPAN PRESS WEEKLY (May 28, 2015), https://www.japan-press.co.jp/modules/news/?id=8246&pc_flag=ON [https://perma.cc/PD5U-VGSQ].

[78] *Id*.

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benefit from the continuing advocacy of the Open Government Movement in Japan.

C. Setsuo Miyazawa

Professor Miyazawa has demonstrated long-standing commitment to the activities of countless Japanese and international associations and organizations, and has received many international awards, attaining worldwide recognition for his research and scholarly activism throughout nearly five decades.[79] Professor Miyazawa has also been instrumental in the creation of many academic and political organizations, including the LSA's Collaborative Research Network on East Asian Law and Society (CRN33). He helped organize East Asia's socio-legal conferences in multiple locations, including the University of Hong Kong in 2010, Yonsei University in South Korea in 2011, Shanghai Jiao Tong University in China in 2013, and Waseda University in Japan in 2015. Under his strong leadership, a new regional organization called the Asian Law and Society Association (ALSA) was founded in 2015, with Professor Miyazawa serving as its inaugural president, and the first ALSA conference being held at the National University of Singapore in 2016. He has published and edited more than a dozen books and authored nearly 400 articles and op-ed pieces, and his work has advanced scholarship on a wide range of topics related to the democratization of the justice system and promotion of government transparency and accountability. His research has also had significant political ramifications, exerting direct influence on public debates and policy discussions concerning the creation of the professional law school in Japan, as well as various judicial system reforms in police and criminal justice procedures in Japan, South Korea, and other East Asia countries.

1. Transparency and Accountability in Police and Prosecutorial Investigations

Professor Miyazawa's works on Japan's criminal justice system have significantly advanced debates and discussions of justice equity and prosecutorial fairness, bringing the attention of both public and academic communities to issues of possible police misconduct and the inequitable arrangement of investigative procedures. His research has questioned the legitimacy and the general lack of transparency and accountability in Japan's policing and prosecutorial process, including the strong beliefs in

[79] For example, his book, *Policing in Japan* (SUNY Press 1992) received the 1993 Distinguished Book Award of the American Society of Criminology. For his contribution to the development of socio-legal research across the globe, Professor Miyazawa received the International Scholarship Prize from the LSA in 2014 and was awarded the prestigious Stanton Wheeler Mentorship Award and the Legacy Award from the LSA in 2021.

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the necessity of interrogation and confession held by police and prosecutorial personnel. Japan's public prosecutors used police detention centers as substitute prisons in which to extract forced confessions under conditions of extreme physical and psychological duress. The lengthy detention of criminal suspects in jail cells with limited access to legal counsel in an attempt to extract confession was also evident in the aforementioned case of the Tachikawa-Three; the defendants detained in multiple police cells for 75 days due to the allegation of criminal trespass at the SDF apartment complex where they had distributed anti-war flyers, even though no such charges were made against the many local businesses who had also delivered flyers to the same mailboxes of SDF residents.[80]

Professor Miyazawa's academic publications and public talks served to create a vital scholarly space for critical interrogations into the closed system of the criminal justice community. Among the themes addressed were the analysis of organized police activities such as the illegal wiretapping of phones of such potential political dissenters as the Japan Communist Party, and the uncritical, ineffectual oversight of such illegal actions by prosecutors and judges.[81] His critical analysis and related public discussions also extended to the complete absence of professional legal education in Japan, even for those who passed the national bar examination. Professor Miyazawa remained critical of the closed nature of the legal apprenticeship system of young legal professionals, because all professional training lay exclusively in the hands of the Japanese Supreme Court and government bureaucrats. Critical legal scholars, socio-legal specialists, and even the general public had no meaningful participation in the formulation of the curriculum of educational programs and legal training manuals.[82]

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[80] Other flyers found in the mailboxes included those from "the pizza shop, the sushi shop, the home builder," in which Repeta concluded that "[t]o single out one specific group and accuse them of 'trespass' is clearly political suppression." Repeta et al., *supra* note 66, at 19. As a recent example of Carlos Ghosn's detention for more than four months with limited access to legal counsel, *see* Mark Maremont & Peter Landers, *U.N. Panel Rebukes Japanese Prosecutors in Handling of Ghosn Case*, WALL STREET JOURNAL, (Nov. 23, 2020).

[81] Setsuo Miyazawa*, Scandal and Hard Reform: Implications of a Wiretapping Case to the Control of Organizational Police Crimes in Japan*, 23 KOBE U. L. REV. 13 (1989).

See, *e.g.*, HIROSHI ITOH, THE SUPREME COURT AND BENIGN ELITE DEMOCRACY IN JAPAN (Routledge 2010); Setsuo Miyazawa, *The Politics of Judicial Reform in Japan: The Rule of Law at Last?* 1 ASIAN-PAC. L. & POL'Y J. 89 (2001).

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2. Professional Law Schools in Japan: The Rise of Omiya Law School and Its Demise

Since the 1990s, Professor Miyazawa has examined the roots of the judicial passivity displayed by many of Japan's judges who remain uncritical of the use of "substitute prisons," and of police and prosecutorial misconduct in handling criminal suspects and defendants behind the walls of police jails and detention centers. Professor Miyazawa suggested that the "cram school"[83] for the preparation of national bar examinations provided a typical example of an inequitable educational institution that focused on mindless accumulation of legal knowledge, as Japanese students were solely taught practical information about the law and legal doctrine. The emphasis on the passing of bar examinations affected so many aspiring young Japanese students that many university law majors rarely attended classes at their universities, instead going to private "cram schools." Since the law is applied in many non-legal fields, Professor Miyazawa called for the establishment of liberal arts education, so as to introduce much broader curriculum options in Japan's undergraduate law program, and also suggested the creation of graduate legal education programs based on American-style law schools.

Professor Miyazawa argued that the liberal arts educational curriculum would enable students to learn the social, political, economic, and historical impacts of law and legal policies in society. Rather than treating students as passive subjects and subservient consumers of pre-selected legal knowledge and information, a liberal arts legal education would transform Japanese students into active participants in the creation of new ideas, knowledge, and inquiries. In the early 2000s, Professor Miyazawa also began to focus his efforts on the establishment of Japan's first graduate law school system and the concomitant institutional and curriculum realignment in legal education, the legal profession, and the realm of ethics and responsibilities. His reform efforts and public debates successfully led to the opening of professional graduate law schools at Japan's universities in 2004. Professor Miyazawa also helped found the independent graduate level law school, Omiya Law School in Saitama Prefecture near Tokyo. This private independent law school was opened in 2004 with much fanfare, receiving the strong support of the Japanese Federation of the Bar Associations and other progressive civic and public groups and organizations throughout Japan. Unlike the many other new law schools at Japanese universities, Omiya Law School did not have any direct university affiliation, but featured 31 professors, including 20 legal professionals, including Lawrence Repeta, among its inaugural law

[83] These schools are also known as "juku" and provide special tutoring, test preparation, and supplementary instruction for high-stakes exams such as national bar exams, college entrance exams, and vocational qualification tests, among others.

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faculty.[84]

The primary objective of Omiya Law School was to recruit a group of non-law-related professionals and ordinary citizens, including medical doctors and professional workers as well as women who had been underrepresented among the ranks of lawyers and judges. Potential students ranged across a wide socio-economic stratum and a variety of political institutions, with the notion that their professional knowledge and practical experiences, fused with legal knowledge, would enable them to deliver more informed and well-rounded legal decisions. Professor Repeta joined the Omiya Law School in 2004, teaching courses in U.S. law and co-directing the Legal Clinic in Freedom of Information. Omiya Law School also offered courses in the evenings and on weekends, in order to accommodate the work schedules of their diverse student body. Unfortunately, the emphasis on the passing of state bar examinations began to take precedence over the diversified curriculum options based on liberal arts traditions. After having witnessed the emergence of the structural impediments faced by Japan's new law school system, Miyazawa shared these problems with Korean legal scholars, thus helping contribute to the policy discussion of the development of equitable structural arrangements and pedagogical frameworks in South Korea, which finally launched its own graduate law school program in 2009.[85] Eventually the law school, like many other professional law schools at Japanese universities, began to transform their legal education curriculum and to downsize or even eliminate many of their innovative and socio-legal course options due to the poor rate of success among their students in passing the bar examinations.

Omiya Law School was forced to close in 2015. In the same year, the Japanese government announced that they would allocate support to law schools according to their enrollments and bar examination performances. Today, many of the professional law schools who opened their doors with much anticipation and great fanfare in 2004, such as Omiya Law School, have decided to suspend student recruitment or to terminate their programs all together.[86] The creation of professional graduate law schools in Japan was intended to promote a liberal arts education which developed students' ability to explore and experiment, and to actively participate in exchanges of diverse ideas, so as to explore the impacts of governmental policies and societal justice systems. Professor Miyazawa's research helped to create these broader public

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[84] Erika Arita, *U.S.-Style Law Schools to Offer Practical Approach*, THE JAPAN TIMES (July 2, 2003).

[85] Tom Ginsburg, *Transforming Legal Education in Japan and Korea*, 22 PENN STATE INT'L L. REV. 433 (2004).

[86] Dan Rosen, *Japan's Law School System: The Sorrow and the Pity*, 66 J. OF LEGAL EDUC. 267 (2017).

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debates while directing academic attention to the shortcomings of Japan government's policing and prosecutorial processes, and his work, as well as the broader Open Government Movement, clearly played a crucial role in addressing key issues. The next section explores some of the limitations of the FOIA, along with the role of whistleblowers, and examines their combined effectiveness in promoting further transparency, accountability, and citizen engagement in governance in Japan and the U.S.

III. THE EFFECTIVENESS OF FOIA AND WHISTLEBLOWING FOR THE PUBLIC'S RIGHT TO KNOW IN THE U.S. AND JAPAN

The Freedom of Information Act (FOIA) became an important legal means of supporting the public's right to know and enabling public disclosure of the state's classified records and secret programs. Many countries around the world have passed their own FOIA legislation, designed to help disclose government programs and share classified information with the public. In 1966, the U.S. became one of the first North Atlantic states to pass FOIA legislation allowing public access to internal documents and protected information of the federal government.[87] This federal legislation was followed by multiple state government actions, leading to a broad level of required information disclosures, not only by the federal government, but all individual state agencies and local institutions.[88] Many countries in Europe and Asia, including South Korea, passed their own freedom of information laws.[89] In Japan, after many years of grassroots Open Government Movements and advocacy, the government finally passed the FOIA legislation in 1999, which was put into effect in 2001.

In addition to the FOIA-related sharing of classified information with the public, the U.S. and other governments enacted other legal provisions protecting both public and private sector workers who decided

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[87] The first country or kingdom to pass a freedom of information act was Sweden in 1766. *See* Roger Vleugels, *Overview of All 86 FOIA Countries* (Sept. 22 2008), https://nationalarchivestt.files.wordpress.com/2010/07/overview-of-all-86-foia-countries.pdf [https://perma.cc/U9SH-ENX2]. In 1951, Finland established the openness of all governmental records and documents.

[88] For example, in California, the state government has adopted the California Public Records Act (CPRA) in 1968, granting public access to government records at all levels, including all state and local government agencies in California. See Stephan A. Barber, *The California Public Records Act: The Public's Right of Access to Governmental Information*, 7 PAC. L. J. 105 (1976).

[89] Repeta & Schultz, *supra* note 20. The Japanese government's official report referred to Japan's FOIA as the "Administrative Information Disclosure Act." *See* JUSTICE SYSTEM REFORM COUNCIL AT THE JAPANESE CABINET OFFICE, THE POINT AT ISSUE IN THE JUSTICE REFORM (Dec. 21, 1999), https://japan.kantei.go.jp/policy/sihou/singikai/991221_e.html. [https://perma.cc/4489-SARF].

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to expose information or activities of fraud, corruption, and other "unethical" governmental conduct to the public. While both FOIA and whistleblowing represent powerful mechanisms for promoting transparency and the disclosure of classified information, there are several distinct differences between them, including: (1) FOIA allows any member of the public to submit a request to a government agency with the objective of seeking specific information, while whistleblowing involves individuals within the organization deciding to expose information that they believe to be illegal, unethical or in violation of laws or regulations; (2) the legitimacy of FOIA is protected by law, while whistleblowing may or may not be legally protected from possible retaliation by the organization or by affected agencies, depending upon the state and differing jurisdictions; and (3) the scope of whistleblowers' actions encompasses a broad range of activities involving both government and private corporations, while FOIA focuses on information disclosure exclusively from government sectors, although, as in the case of the Boeing airplane crashes, government agencies, such as the FAA, could be mandated to disclose proprietary trade secrets held by private corporations.[90]

The whistleblowers, like FOIA, play a crucial role in bringing to light wrongdoings, corruption, or "unethical" conduct or decisions occurring within an organization, whether public, private, or nonprofit. In 1998, the U.S. government passed the Whistleblower Protection Act, which guaranteed freedom of speech and protected whistleblowers from retaliation for disclosing information in order to expose illegal or "unethical" conduct of the government and other powerful private institutions. While FOIA and whistleblowing differ in both the characters involved and sectors of disclosure, both mechanisms can complement one another, and they have certain commonalities in pursuing the goals of promoting transparency, accountability, and the public's rights to know.

In the public sector, the similarities between FOIA and whistleblowing include: (1) promoting transparency in government policies and programs; (2) scrutinizing governmental accountability by allowing citizens, the media, and open government advocates to examine the legitimacy of government actions and decisions; (3) serving public interests by providing the general population with information that can be employed to interrogate the adequacy of government policies and decision-making; and (4) advancing democratic principles in sharing government information with the public to promote public discussions and debates on the adequacy of policies, actions, and decision-making.[91]

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[90] *See generally* Sharon K. Sandeen & Ulla-Maija Mylly, *Trade Secrets and the Right to Information: A Comparative Analysis of E.U. and U.S. Approaches to Freedom of Information and Whistleblowing*, 21 N. C. J. OF L. & TECH. 1 (2019-2020).

[91] Robert Vaughn, *The Relationship Between Freedom of Information and Whistleblower Protection*, 99 FREEDOM OF INFO. REV. 29 (June 2002).

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One important example illustrating the complementarity of FOIA and whistleblowing involves the revelation of a secret pact signed between the Japanese and U.S. governments over the 1972 return of Okinawa to Japanese rule. Long before the passage of Japan's FOIA in 1999, a whistleblower in the Japanese Foreign Ministry leaked information on the secret bilateral pact signed by both Japanese and U.S. governments, which exposed details of a treaty that the Japanese government had long insisted did not exist. Based on this leaked information, Mainichi Shimbun reporter Takichi Nishiyama was able to expose this secret bilateral pact in a 1971 newspaper article, the year before Okinawa was returned to Japan after 27 years of U.S. military occupation of the island. The Japanese government had claimed that there were no secret agreements tied to the reversion, when, in fact, it had covertly agreed to pay $5 million to the Okinawa's for land damage.[92] Specifically, Nishiyama obtained a copy of a telegram containing the details of the secret pact between the U.S. and Japanese governments from a whistleblower who worked as a Japanese Foreign Ministry secretary in 1971, thus revealing a secret pact stipulating that Japan would shoulder the expenses for restoring U.S. military bases in Okinawa, which was contrary to public claims.[93]

The government secretary was arrested for leaking the government secret. Nishiyama was also arrested, on suspicion of violating the National Civil Service Law and instigating the leaking of state secrets by urging a Foreign Ministry secretary to pass on classified documents about the negotiation process. While the Tokyo District Court found Nishiyama not guilty in 1974, an appellate court overturned the ruling and convicted him with a suspended prison sentence, a guilty verdict which was finalized by the Supreme Court in 1978.[94] In the early 2000s, through the use of FOIA requests and the further investigations at the National Archive by journalists and scholars, including International Relations Professor Masaaki Gabe at the University of the Ryukyus in Okinawa, Japan, further documentation was uncovered that supported Nishiyama's initial claims. Declassified documents also revealed that, as Nishiyama had exposed thirty years earlier, not only had Japan and the U.S. signed a secret pact, but Japan had paid an additional $65 million to finance costs related to the

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[92] Saikō Saibansho [Sup. Ct.] May 31, 1978, 1976 (A) 1581, 32 Keishu 3, 457 (Japan) (*Nishiyama v. Japan*). For the detailed analysis of this case, *see* Lawrence W. Beer, *Freedom of Expression: The Continuing Revolution*, 53 L. & CONTEMP. PROBLEMS 39 (1990); *see also* Silvia Brown Hamano, *Incomplete Revolutions and Not So Alien Transplants: The Japanese Constitution and Human Rights*, 1 J. OF CONST. L. 416 (1999).

[93] David Johnson, *Disgraced Mainichi Journalist Reopens 30-year-old Scandal Over Okinawa Reversion*, 3 THE ASIA-PACIFIC JOURNAL: JAPAN FOCUS 1 (July 6, 2005), https://apjjf.org/-David-Jacobson/1983/article.html [https://perma.cc/2Q6W-CZZR].

[94] *Ex-Reporter Urges Japanese Press to be Better Watchdog*, JAPAN ECONOMIC NEWSWIRE (June 5, 2002).

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1972 Okinawa reversion.[95] The disclosed information further revealed that Japan would pay an additional $320 million to cover goods and services for the improvement and transfer of U.S. military facilities under the bilateral agreement in June 1971.[96] In 2009, Nishiyama filed a lawsuit at the Tokyo District Court against the Japanese government, demanding any additional documents related to the secret agreement, but lost at the Supreme Court in 2014. Nishiyama stated that "the existence of the secret agreement that deceived the public was never investigated due to the government's perjury, and only the label of instigator remained. For more than a quarter of a century, until it was revealed in the U.S. Public record, I was socially ostracized, living only as a breather."[97] Nishiyama quietly passed away in 2023, at the age of 91.[98]

While the initial disclosure of the secret pact occurred in 1971, it was not until several decades later, with the declassification of U.S. documents and further investigations, that the extent of its detailed contents and political ramifications became publicly known. Nishiyama's efforts to reveal the state secret led to his prosecution and condemnation by the government but played an important role in creating generative public debates about government transparency and accountability, and helped expose secret details of bilateral negotiations and monetary compensations related to the Okinawa reversion agreement.

A. Potential Limitations of FOIA and Whistleblowing Strategies

While FOIA is an effective tool for exposing classified government information and promoting the public's right to know, FOIA has also been a useful tool for government agencies to implement in seeking to identify whistleblowers and to potentially prosecute them for their actions in exposing government secrets, corruption, and/or unethical conduct. U.S. government agencies, for example, began to exploit FOIA requests in an effort to identify potential leakers of state secrets, including information exempted from FOIA disclosure. Recently, the FBI began to use FOIA requests to identify, surveil, and prosecute whistleblowers who had exposed state secrets to the public. One example is the case of Terry James Albury, a longtime FBI special agent in its Minneapolis field office, who

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[95] *Declassified Papers Confirm Existence of Secret Okinawa Financial Pact*, JAPAN ECONOMIC NEWSWIRE (Dec. 22, 2010).

[96] *Id*.

[97] *Moto Mainichi Shinbun Kisha no Nishiyama Takichi-san Shikyo*, 91 *Sai… Okinawa Henkan Mitsuyaku o Hodo* [*Former Maniichi Shimbun Reporter Takichi Nishiyama Dies at Age 91… Covering the 'Secret Deal' for Return of Okinawa*], YOMIURI SHIMBUN (Feb. 26, 2023).

[98] *Id*.

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decided to leak classified documents to an online news organization called The Intercept, which was founded in 2013 and became known for its investigative journalism and reporting on civil liberties as well as issues of national security and diplomatic relations that were classified by FOIA as exempted information.

Albury was the only African-American FBI field agent in Minnesota, and was assigned as a Minneapolis-St. Paul International Airport liaison working on counterterrorism matters.[99] In 2017, The Intercept published a series titled, "The FBI's Secret Rules," based on Albury's leaked documents on the depth, broad scope, and eminent power of FBI surveillance since 9/11, as well as the FBI's secret guidelines for the recruitment of informants among journalists, religious and ethnic groups, and immigrant communities.[100] These exclusive articles also exposed the FBI's extraordinary powers and authority in aggressively investigating anyone who could be a valuable source; deporting informants no longer deemed valuable; concealing payments to confidential sources; using low-level "assessments" to allow the FBI to follow people with planes; "running" subjects' names through the CIA and NSA; investigating white supremacist infiltration of law enforcement; and bypassing its own rules so as to infiltrate political and religious organizations, among others.[101]

Albury was ultimately identified as the government whistleblower, based on FOIA requests filed to the FBI by The Intercept. In March 2016, The Intercept submitted to the FBI two FOIA requests that contained specific information, identifying the names of secret documents, including "Confidential Human Sources Assessing," which contained guidelines and instructions that assisted FBI agents in cultivating informants among targeted groups and communities. The FBI also did its own investigation based on more than 27 documents published by The Intercept's from April 2016 to February 2017. Albury was one of the individuals who had accessed the documents from the FBI system classified as secret, the contents of which were revealed by The Intercept articles. Further, on three occasions in the summer of 2017, video surveillance tapes captured Albury at his airport office, holding a digital camera and inserting what

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[99] Mukhtar M. Ibrahim, *Minneapolis FBI Agent Charged with Leaking Classified Information to Reporter*, MPRNEWS (Mar. 28, 2018), https://www.mprnews.org/story/2018/03/28/minneapolis-fbi-agent-charged-with-leaking-classified-information [https://perma.cc/R6K4-VMW7].

[100] *Id*.

[101] Zack Kopplin, *How the FBI Uses the Freedom of Information Act to Track Down Whistleblowers*, THE WASHINGTON POST (Apr. 9, 2018) https://www.washingtonpost.com/news/posteverything/wp/2018/04/09/how-the-fbi-uses-the-freedom-of-information-act-to-track-down-whistleblowers/ [https://perma.cc/N5MT-NWLJ; *The FBI's Secret Rules*, THE INTERCEPT (Jan. 31, 2017), https://theintercept.com/series/the-fbis-secret-rules/ [https://perma.cc/V8JL-DXYW]

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appeared to be a memory card into the camera.[102] Albury was subsequently indicted under the 1917 Espionage Act and pleaded not guilty, arguing that he had decided to leak the information in order to expose wrongdoings within the FBI, and insisting that his action did not lead to harming national security. Albury eventually pleaded guilty to lesser charges in 2018 and was sentenced to four years in prison.[103] After his release, Albury continued to remain a vocal advocate for transparency and accountability of government policies and actions.

B. Risks of Public Sector Whistleblowing

In addition to the scrutiny of FOIA requests by government agencies to identify, apprehend, and prosecute whistleblowers for leaking state secrets, another mechanism of deterrence against whistleblowing activities was rendered by the U.S. Supreme Court in *Snepp v. U.S.* (1980).[104] This case concerned former CIA agent Frank Snepp, who had published a book, *Decent Interval: An Insider's Account of Saigon's Indecent End* that described the CIA's cover-up of its role in Vietnam during the evacuation of Saigon, which was later renamed as Ho Chi Minh City, after its fall in 1975.[105] As one of the last CIA agents and Americans airlifted from the U.S. Embassy in Saigon in the waning moments of the Vietnam War in 1975, Snepp criticized the CIA's assessments of the chaotic situation in Vietnam, including its failure to accurately predict the speed with which Saigon would fall. Snepp also criticized bureaucratic inefficiencies, including how agency priorities often conflicted with ethical considerations of the welfare of American personnel over those of Vietnamese allies, and the U.S.'s actions to leave South Vietnamese allies behind at the war's end, including tens of thousands who had worked for the Embassy, CIA and other numerous U.S. agencies during the Vietnam War.[106] Snepp claimed that the CIA's handling of the evacuation from Vietnam was an institutional disgrace, particularly in terms of the abandonment of "400 to 500 members of Saigon special police forces we (CIA) had trained" who were in "imminent jeopardy from the communists."[107]

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[102] Ibrahim, *supra* note 99.

[103] Reitman, *supra* note 22.

[104] *Snepp v. United States* 444 U.S. 507 (1980).

[105] FRANK SNEPP, DECENT INTERVAL: AN INSIDER'S ACCOUNT OF SAIGON'S INDECENT END TOLD BY THE CIA'S CHIEF STRATEGY ANALYST IN VIETNAM (Random House Pub. 1977).

[106] *See generally id*.

[107] 60 Minutes, *Mike Wallace's Interview with Frank Snepp About His Book "Decent Interval"* (Sept. 12, 2013), https://www.youtube.com/watch?v=9zLheLmPwHM [https://perma.cc/5KNE-GP5Z].

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The U.S. government filed a lawsuit against Snepp, claiming that he had failed to fulfill his contractual agreement as a condition of CIA employment to submit his writings and manuscripts for pre-publication review. In a 6-3 decision, the Supreme Court ruled that the government could enforce their employees to submit their pre-publication materials for review, in order to prevent any unauthorized disclosure of classified documents and secret information. While acknowledging the right of government employees to freedom of speech and expression, the Supreme Court held that the employee's agreement to submit the writings for review was a reasonable restriction on speech in the interest of national security.[108]

Snepp suffered significant legal and political repercussions from the publication of his book without prior CIA review and approval. However, his book sparked public debates about the revolutionary role played by a whistleblower and the right of the public to know about government secrecy and war ethics. His book also served as a strong defense of whistleblowing and the right of government insiders to speak against the agencies' wrongdoing, including the human cost of CIA and U.S. operations overseas, and the lack of government accountability for their operations and programs.

The 1980 decision by the U.S. Supreme Court had a significant deterrent effect on government employees' right to speak out about unethical, if not illegal, government actions and programs without the fear of retaliation by the agencies they had worked for, including the possibility of criminal prosecution, trial conviction and lengthy imprisonment. The Supreme Court decision also reinforced the notion that employees with access to classified information must bear the responsibility of safeguarding it, even long after the official termination of their government employment. Prior to the Snepp decision, the public sector whistleblower had relative degrees of expressive freedom and public support in disclosing classified documents. In 1971, for example, former military analyst Daniel Ellsberg, who had worked for the RAND corporation and the Department of Justice (DOJ), became a whistleblower in releasing classified DOJ studies of the U.S. involvement in Vietnam from 1945 to 1968. These declassified documents, called "The Pentagon Papers," contained detailed accounts of the covert expansion of U.S. military operations in Vietnam, secret bombings in Cambodia and Laos, and government assessments of military and political strategies that contradicted public statements made by government officials about the progress of the war in Vietnam.[109] Ellsberg released copies of the

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[108] Bruce D. Fisher, *The Whistleblower Protection Act of 1989: A False Hope for Whistleblowers*, 45 RUTGERS L. REV. 355 (1990-1991).

[109] DANIEL ELLSBERG, REP. OF THE OFF. OF THE SEC'Y OF DEF. VIET. TASK FORCE (1969), https://www.archives.gov/research/pentagon-papers [https://perma.cc/M8S2-2CXU].

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Pentagon Papers to the media, including the *New York Times*, *Washington Post*, and other major publication outlets. After the U.S. government under the Nixon Administration sought to prevent its further publication, a legal battle ensued, soon reaching the Supreme Court. In *New York Times Co. v. United States* (1971), the U.S. Supreme Court rendered a 6-3 decision in favor of the press, upholding the First Amendment protection of freedom of the press, thus contributing to public awareness of the government's lack of transparency, accountability, and truthfulness regarding its accounts of the scope, scale, and progress of the U.S. role and military operations in Vietnam.[110]

Like Snepp and Albury who had worked for the CIA and FBI respectively, Ellsberg also faced multiple criminal charges, including the violation of the 1917 Espionage Act in disclosing classified state secrets, the thefts of government property by unlawfully obtaining copies of the Pentagon Papers, and conspiracy involving his collaboration with Anthony Russo, a former colleague who helped him photocopy the documents. However, the case against Ellsberg had to be dismissed as a result of the Nixon Administration's illegal activities and misconduct undertaken to discredit him, including the wiretapping of Ellsberg and the burglary of his psychiatrist's office.[111] The release of the Pentagon Papers led to significant public debates in relation to the First Amendment rights of government employees to share classified information with the public and the extent of the government's ability to prosecute their employees for leaking such information.

In recent years, two significant troves of state secrets, relating to illegal surveillance of the citizenry and possible war crimes committed by U.S. military personnel, have been exposed by two public sector whistleblowers. In 2010, former U.S. Army intelligence analyst Chelsea Manning, formerly known as Bradley Manning, leaked a vast number of classified documents to Wikileaks,[112] while serving in the U.S. Army at the time of the leaks. Disclosed information included the records of diplomatic cables from 1966 to 2010, military reports from Iraq and Afghanistan, and a classified video called "Collateral Murder," showing a U.S. Apache helicopter attack against civilians that killed two Reuters journalists and multiple Iraqi civilians in Baghdad, Iraq.[113] Manning was

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[110] New York Times Co. v. United States, 403 U.S. 713 (1971).

[111] DAVID R. NISSEN, PERVERSION OF THE PENTAGON PAPERS TRIAL: HOW SELFISH AMBITION AND LEFTIST PERFIDY DISPLACED DUTY AND LAW TO THWART JUSTICE (2022).

[112] Wikileaks is an international non-profit media organization that publishes secret, classified, and confidential documents from anonymous sources. For more information, see its website, available at wikileaks.org.

[113] Paul Daley, *'All Lies': How the US Military Covered Up Gunning Down Two Journalists in Iraq*, THE GUARDIAN (June 14, 2020). https://www.theguardian.com/us-news/2020/jun/15/all-lies-how-the-us-military-covered-up-gunning-down-two-

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arrested in 2010, charged with leaking classified information to Wikileaks, convicted in 2013 under multiple charges, including violations of the Espionage Act, and sentenced to 35 years in prison.[114] In January 2017, President Barack Obama commuted the sentence and Manning was released from prison in May 2017.[115]

Three years after Manning's 2010 revelation, Edward Snowden, a former CIA employee in the global communication division at CIA headquarters in Langley, Virginia, leaked classified information regarding the NSA's global surveillance network and program. Snowden also worked as the CIA's technical expert in Geneva, Switzerland, where he gained further access to highly classified information about global communications networks. Snowden held various positions at the NSA, including as a systems administrator who managed computer systems and networks. Snowden also worked as a contractor to NSA at Fort Meade, Maryland, for private firms including Booz Allen Hamilton Holding Corporation and Dell Inc.[116]

In 2013, Snowden traveled to Hong Kong, considering it to be a safe and neutral place from which to blow the whistle on the NSA's global surveillance program, including the Five Eyes alliance partnership of the U.S. intelligence apparatus with Australia, Canada, New Zealand, and the U.K.[117] Snowden also revealed the existence of the mass electronic surveillance data mining system called the PRISM Program, which allowed the NSA to collect and analyze internet communications from such major high-tech firms as Google, Microsoft, Apple, and Facebook; Bulk Data Collection of telephone metadata that contained telephone calls made by millions of Americans; XKeyscore, which enabled the searching and examination of vast amounts of global internet data such as emails, online chats, and browsing histories; and Boundless Informant, which allowed NSA to track and analyze intelligence data collected from various

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journalists-in-iraq [https://perma.cc/8WT9-FKMV].

[114] James Esseks, *President Obama's Commutation of Chelsea Manning's Sentence Most Likely Saved Her Life*, ACLU (Jan. 17, 2017), https://www.aclu.org/news/free-speech/president-obamas-commutation-chelsea-mannings [https://perma.cc/4GVX-2U4C].

[115] Ed Pilkington, *Chelsea Manning Released From Military Prison*, THE GUARDIAN (May 17, 2017), https://www.theguardian.com/us-news/2017/may/17/chelsea-manning-released-from-prison [https://perma.cc/7SHK-R8CN].

[116] *See generally* EDWARD SNOWDEN, PERMANENT RECORD (Metro. Books 2019).

[117] Michael Berkowitz, *'Snowden': Love, Life and Privacy in the Time of Surveillance*, HUFFINGTON POST (Sept. 17, 2016), https://www.huffpost.com/entry/snowden-love-life-and-pri_b_12034562 [https://perma.cc/HKC3-PTGE].

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countries around the world, among other programs.[118] The actions of government whistleblowers, such as Snepp, Ellsberg, and Snowden, have raised complex issues surrounding the state's power and its ubiquitous technological advancement, enabling surveillance and monitoring of its own population as well as that of other countries. The exposure of classified state programs also raises serious and contentious issues about the tensions between the national security imperatives of the state and the individual privacy rights guaranteed under the Constitution.

C. Risks of Private Sector Whistleblowers

In addition to the public sector whistleblowers who have exposed governmental secrets from deep within state institutions, there are others working for private corporations, such as investigative journalists, who have also exposed government corruption, misconduct, and unethical, if not illegal, actions. In recent decades, many state agencies have closely collaborated with high-tech industries, as the U.S. Department of Defense (DoD) has played a significant role in fostering and shaping the growth of advanced technology industries through the DoD's military expenditures in Research and Development (R&D) at universities and research institutions. This so-called "Pentagon Model" has also fostered public-private partnerships in the development of advanced technologies and has promoted technology transfers to private corporations for civilian applications.[119] For example, Snowden worked for multiple private corporations, but his primary assignments at these firms were designed to provide technical assistance to U.S. federal agencies, including the NSA and CIA, to support their all-encompassing surveillance programs in the U.S. and abroad.

Private sector whistleblowers have faced different treatment by the government than have public sector whistleblowers, and different forms of persecution and condemnation. U.S. investigative journalist Gary Webb, who worked for the *San Jose Mercury News*, helped expose the CIA's connections to Central America, the Contras rebels in Nicaragua, drug trafficking, and the crack cocaine endemic among African American communities in Los Angeles during the 1980s.[120] *San Jose Mercury News*

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[118] Glenn Greenwald & Ewen MacAskill, *Boundless Informant: The NSA's Secret Tool to Track Global Surveillance Data*, THE GUARDIAN (June 11, 2013). https://www.theguardian.com/world/2013/jun/08/nsa-boundless-informant-global-datamining [https://perma.cc/8KXJ-WUMK]; *see also* LUKE HARDING, THE SNOWDEN FILES: THE INSIDE STORY OF THE WORLD'S MOST WANTED MAN (Vintage Books 2014).

[119] *See generally* ANNIE JACOBSEN, THE PENTAGON'S BRAIN: AN UNCENSORED HISTORY OF DARPA, AMERICA'S TOP-SECRET MILITARY RESEARCH AGENCY (2016).

[120] *See generally* GARY WEBB, DARK ALLIANCE: THE CIA, THE CONTRAS, AND THE CRACK COCAINE EXPLOSION (Seven Stories Press 1998).

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was one of the major newspapers in the Northern California area, which included Silicon Valley, home to Apple, Hewlett-Packard, and other high-tech firms that had worked with the Pentagon, as well as Google, Cisco Systems, Facebook, and Intel.

Webb's investigative newspaper reporting in a series called "Dark Alliance" highlighted the activities of the CIA in Central America. Among the revelations was the disclosure that in order for the CIA to raise sufficient funds for Contra rebels to fight against Nicaragua's socialist Sandinista government, which had successfully toppled the U.S.-supported Somoza dictatorship in 1979, the CIA was involved in cocaine trafficking into the U.S. market, with the assistance of top administrators in the Nicaraguan Contra Rebel organizations. Webb further reported that the CIA's drug trafficking operations had led to the subsequent crack cocaine epidemic in Los Angeles and other major metropolitan regions in the U.S.[121] Webb died by allegedly committing suicide with two bullets to his head in December 2004.[122] His death took place in the midst of the stormy criticisms against him that had been mounted by the CIA and major media organizations that challenged his investigative methodology and conclusions based on his findings.[123]

Seymour Hersh, another private journalist, exposed the secret of one of the most horrific massacres committed by U.S. military personnel during the Vietnam War. The mass killing of rural Vietnamese villagers, called the "My Lai Massacre," took place in March 1968, when the U.S. Army Division called the Charlie Company entered rural villages of Quang Ngai Province, South Vietnam and began a terrifying spree of rape, torture and murder, killing several hundred unarmed South Vietnamese civilians, mostly women, children and the elderly.[124] Despite efforts by the U.S. Army and military investigators to cover up and downplay the massacre, Hersh was able to publish a series of articles in the *St. Louis Post-Dispatch* and *The New Yorker*, exposing the details in full.[125]

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[121] *Id*.

[122] Ryan Devereaux, *Managing a Nightmare: How the CIA Watched Over the Destruction of Gary Webb*, THE INTERCEPT (Sept. 24, 2014), https://theintercept.com/2014/09/25/managing-nightmare-cia-media-destruction-gary-webb/ [https://perma.cc/3LBU-XHUN].

[123] *Id.*

[124] SEYMOUR M. HERSH, MY LAI 4: A REPORT ON THE MASSACRE AND ITS AFTERMATH (Random House Inc. 1970); NICK TURSE, KILL ANYTHING THAT MOVES: THE REAL AMERICAN WAR IN VIETNAM (Picador 2013); *see also* Fresh Air, *'Anything That Moves': Civilians and the Vietnam War*, NPR (Jan. 28, 2013), https://www.npr.org/2013/01/28/169076259/anything-that-moves-civilians-and-the-vietnam-war# [perma.cc/7VPJ-XJVR].

[125] Hersh's articles also incorporated other independent investigations carried out by former Army helicopter gunner Ronald Ridenhour. *See, e.g.*, Lily Rothman, *Read the Letter That Changed the Way Americans Saw the Vietnam War*, TIME (Mar. 16, 2015),

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Hersh's revelations led to further investigations related to the cover-ups and formal prosecution of soldiers involved in the massacre. His investigative reporting also resulted in the court-martial of Lieutenant William Calley, who was convicted of his role in the murder of 22 Vietnamese, found guilty, and sentenced to life in prison. However, his sentence was later reduced to 20 years, under the order of the Commanding General of the Third Army, and he was released on parole after serving only three years of house arrest under the order of then-President Richard Nixon.[126] Hersh was a freelance journalist when his reporting of the My Lai Massacre exposed the secret war crimes committed by U.S. soldiers in their deliberate attacks on and unlawful killing of non-combatant civilians, thus helping to spark the larger anti-war movement in the U.S. and across the globe. Hersh's revelation also led to serious public discussions on the violation of human rights by the U.S. military in Vietnam, and the demand for greater transparency and accountability for military actions abroad.

In 2004, Hersh went on to expose the Abu Ghraib torture program, in which military police personnel, intelligence interrogators, and private military contractors were involved in the mistreatment of prisoners and detainees at the notorious military prison located to the west of Baghdad, the capital city of Iraq. Hersh's article in *The New Yorker*, along with photographs of the abuse and torture of prisoners, exposed in detail the manner of mistreatment.[127] His account relied on a military report prepared by Major General Antonio Taguba, who also investigated the allegations of torture and abuse at the prison,[128] which included physical and psychological abuse, sexual assault, and acts of humiliation of prisoners. Hersh's work also noted the serious violation of customs of war and such international laws as the Geneva Conventions that had been enacted to ensure specific protections for prisoners of war and civilian populations in conflict regions.[129] Hersh's investigative report furthermore raised the issue of government accountability for war crimes committed by military personnel and private corporate contractors, which posed

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https://time.com/3732062/ronald-ridenhour-vietnam-my-lai/ [https://perma.cc/LD4W-W3TM].

[126] Andrew Katz, *Field of Dishonor: Famous American Court-Martials: Lieut. William Calley*, TIME (Aug. 17, 2013), https://nation.time.com/2013/08/18/field-of-dishonor-famous-american-court-martials/slide/lieut-william-calley/ [https://perma.cc/WV5G-55RP].

[127] Seymour Hersh, *Torture at Abu Ghraib*, THE NEW YORKER (Apr. 30, 2004), https://www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib [https://perma.cc/4MB7-UPL8].

[128] *Id*.

[129] Avery F. Gordon, *Abu Ghraib: Imprisonment and the War on Terror*, 48 RACE & CLASS 42 (2006).

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significant legal, ethical, and moral questions regarding the treatment of detainees in conflict areas across the globe.

Soon after Hersh exposed the Abu Ghraib abuse and torture, the American Civil Liberties Union (ACLU), the Center for Constitutional Rights (CCR), and veterans' organizations filed a FOIA lawsuit to the government. Working for *The New Yorker*, Hersh also filed FOIA requests that yielded crucial photographs documenting the torture and abuse at Abu Ghraib, which played a central role in raising public awareness and sparking outrage in the U.S. and around the globe.[130] The combined use of both FOIA and whistleblowing served as an important tool to unearth and expose egregious conduct by military police personnel, military intelligence interrogators, and civilian military contractors.

The existence of secret torture sites known as "black sites" and other clandestine U.S. military facilities also received significant public attention after Hersh's revelations. In these clandestine military prisons throughout the world, detainees might have been subjected to various forms of torture, interrogation, and other human rights abuses. Relying on Chelsea Manning's leaked information in 2010, for instance, Wikileaks founder Julian Assange exposed the existence of a global network of nearly 1,400 overseas U.S. military bases and facilities in over 120 countries.[131]

As a private investigative journalist, Hersh faced hostility and attempts to discredit his work, including a defamation lawsuit filed by military personnel against Hersh and CBS News, which had aired his reporting of the My Lai Massacre. The lawsuit eventually went to trial, with Hersh and CBS News successfully defending their case.[132] In relation to Hersh's revelation of the Abu Ghraib torture program, the George W. Bush Administration and the Department of Defense denied the use of torture and disputed Hersh's reporting, arguing that it was based on uncollaborated sources and the over-exaggeration of the extent of interrogation.[133] Nonetheless, subsequent investigations by civil society organizations, and progressive lawyers who helped file lawsuits and FOIA

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[130] *U.S. Illegally Withheld Records on Abuses at Abu Ghraib and Elsewhere, ACLU Charges*, ACLU (June 2, 2004), https://www.aclu.org/press-releases/us-illegally-withheld-records-abuses-abu-ghraib-and-elsewhere-aclu-charges [https://perma.cc/8X5Y-3VLS].

[131] Robert Barsocchini, *US Now Has Over 1,400 Foreign Military Bases Spread Over 120 Countries: Assange*, COUNTERCURRENTS (Sept. 10, 2015), https://www.countercurrents.org/barsocchini100915.htm [perma.cc/JD6T-LDTE].

[132] Rudy Abramson, *Westmoreland to Drop Libel Suit Against CBS: General, Network to Make Joint Announcement Today on Ending of $120-Million Legal Action*, LOS ANGELES TIMES (Feb. 18, 1985), https://www.latimes.com/archives/la-xpm-1985-02-18-mn-3110-story.html [https://perma.cc/ZHD2-UJ2E].

[133] Reed Brody, *The Road to Abu Ghraib*, HUMAN RIGHTS WATCH (June 8, 2004), https://www.hrw.org/report/2004/06/09/road-abu-ghraib [https://perma.cc/499C-EU8E].

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requests to the government, ultimately confirmed the accuracy of his reporting, thereby leading to further public awareness of the torture and abuse at military prisons and, prompting calls for transparency and accountability of military actions and government programs all over the world.

IV. CONCLUSIONS

The annual Japanese Law Symposium at UCLSF was held in September 2023, featuring an examination of the history of Japan's Open Government advocacy and movement. This much-anticipated event was organized by Professors Setsuo Miyazawa and Keith Hand of the Center of East Asian Legal Studies (CEALS) at UCLSF. The first symposium speaker was Hiroshi Miyake, a Japanese attorney who led a group of lawyer and civic activists in the Open Government Movement and is widely considered to be one of the leading advocates for the establishment of the information disclosure system in Japan. The second speaker was former Omiya Law School and Meiji University Professor Lawrence Repeta, who practiced law and taught in Japan and was an active member of Japan's Open Government Movement over several decades. UCLSF Professor Marsha Cohen, who is specialized in federal safety law, spoke on the transparency of parallel public records law in the U.S. and in California. Following their engaging presentations, Q&A sessions were facilitated by Professor Setsuo Miyazawa, exploring future strategies for promoting the public's right to know, as well as greater transparency, accountability, and citizen engagement in governance in Japan.

This paper examines the significant contributions made by Miyake, Repeta, and Miyazawa to Japan's Open Government Movement. The paper also analyzes the effectiveness of FOIA and whistleblowing as two distinct mechanisms used to advance transparency and the disclosure of classified information in Japan and the U.S. While the combined use of these mechanisms may be an effective method of exposing government misconduct and corruption, FOIA requests have become increasing precarious because of the government's scrutiny of them in order to identify and expose the identity of whistleblowers, leading in some cases to persecution, prosecution and incarceration. It is important to recognize that many areas of government information, including bilateral secret pacts and treaties, were and are still kept secret from public knowledge. The continuation of Open Government advocacy, and the development of more critical and politically-organized movements in this area, is of great importance in Japan and in many other regions of the world in order to promote greater transparency, accountability, citizen empowerment, and a higher degree of collaboration between the government and diversified sectors of civil society and progressive organizations.

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